

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES
Successor to the Board of Control

ADDENDUM TO ADMINISTRATIVE RECORD

City of El Monte et al., Claimants
(Chapter 1143, Statutes of 1980,
Regional Housing Needs: Locality's Fair Share)

Board of Control Nos. SB 90 – 3759, SB 90 – 3760, SB 90 – 3916

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Memorandum

To : Department of Finance,
Local Mandate Unit

Date: April 22, 1982

From : State Board of Control

Subject: SB 90-3364

Adoption of Parameters and Guidelines and Request for Statewide Estimates for Reimbursement of Mandated **costs** Incurred Under Chapter **4.143**, Statutes of 1980 (Regional Housing: **Locality's Fair Share**)

At its meeting on March 25, 1982, The Board adopted the attached Parameters and Guidelines for a mandate **found** in the above entitled-claim.

Pursuant to Revenue and Taxation Code Section 2253.2, the Board must: **now** approve an "estimate of the statewide costs to be incurred by local agencies...affected by the mandate". The estimate **may be** approved by the Board "after receiving and reviewing recommendations from the Department of Finance and any other interested parties". In order to comply with this statutory direction, I **am** requesting that all parties in receipt of this letter submit a proposed estimate of the **costs** to be incurred under this mandate during the 1980-81, 1981-82, 1982-83, and 1983-84 fiscal years.

All proposed estimates must be submitted to this office no later than July 2, 1982. Proposed estimates will be forwarded to any parties interested in them. After this exchange, I will convene a meeting to discuss the proposals, If necessary. The proposed statewide costs estimates are tentatively **scheduled** for hearing on August 26, 1982 in Room 587, Office Building Na, 1, 915 Capitol Mall, Sacramento, California, Hearing will begin at 9:30 a.m.

I encourage everyone to **give this matter** your fullest attention so **that** we may include this estimate in our claims bill. Thank you for your anticipated cooperation,



RAY BANION

Assistant Executive Secretary
(916) 323-3562

RB/vml

cc: William Ross, Meserve, Mumper & Hughes (City of El Monte)
Melissa Taubman, Los Angeles County
Carlos Luna, San Francisco City and County
Vincent Brown, Legislative Analyst's Office
Glen Beatie, State Controller's Office
Dan garrison, League of California Cities
Carolyn Burton, Housing and Community Development
Olena Berg, Mousing and Community Development

Parameters and Guidelines
Regional Housing Needs: Locality's Fair Share
(Chapter 1143, Statutes of 1980)

Summary of Mandate

Chapter 1143, Statutes of 1980, established substantially more detailed requirements for the housing element of a county's or city's general plan. Among the provision of this law **was** the requirement that counties and cities provide in their respective housing elements for the regional demand for housing, taking into account the following factors:

- Market demand for housing.
- Employment opportunities.
- Availability of suitable sites and public facilities.
- Commuting patterns.
- Type and tenure of housing.
- Housing needs of farmworkers.
- Desire to avoid further impaction of localities with relatively high proportions of lower income households.

Board of Control Decision

The Board of Control found that Chapter 1143, Statutes of 1980 constituted a mandate requiring "an increased level of service" to be provided by cities and counties on August 19, 1981. The Board acted in response to "claims of first impression" filed by the City of El Monte on July 7, 1981; County of Los Angeles on February 19, 1981; and City and County of San Francisco on February 19, 1981.

At its December 16, 1981 and January 20, 1982 meetings, the Board considered the proposed Parameters and Guidelines under Chapter 1143/80. Considerable controversy centered around the basis for measuring the "increased level of service". A majority of the Board then directed Board staff to use the 1971 Housing Element Guidelines adopted by the Department of Housing and Community Development as a basis for determining the pre-SB 90 service level requirements. Consequently, those requirements in Chapter 1143/80 that exceeded the 1971 Housing Element Guidelines were identified as reimbursable increases in service levels. }

Eligible Claimants

Each county, city or city and county (collectively referred to as "localities") which adopts a general plan,

Period of Reimbursement

All costs incurred on or after January 1, 1981, except as other-

wise specified under "reimbursable costs", are reimbursable. Chapter 1143/80 became effective on January 1, 1981. Only one fiscal year shall be included in each claim. The first claim submitted will report costs incurred from January 1, 1981 to June 30, 1981; the second from July 1, 1981 to June 30, 1982.

If total costs incurred in a single fiscal year are less than \$200, no reimbursement shall be allowed (RTC Section 2233).

Reimbursable Costs

Revenue and Taxation Code Section 2207 defines "costs mandated by the state" to mean any increased costs resulting from "an increased level of service or new program".

AB 2853 made numerous changes in the housing law, which, the Board concluded, resulted in an "increased level of service". In order to determine what requirements constitute an "increased level of service", the Board ruled that the 1971 Housing Element Guidelines issued by the State Department of Housing and Community Development represented the standard of compliance to be used by local governments in preparing the housing element of their respective general plans prior to AB 2853.

Consequently, reimbursable costs is the "additional costs" as a result of an "increased level of service" found in AB 2853 when compared to the 1971 Guidelines. Costs associated with the following activities under Title 7, Div. 1, Ch. 3, Art. 10.6, of the Government Code, are reimbursable:

- A. documentation of the relationship of zoning and public facilities and services to land suitable for residential development - Section 65583(a)(3). This activity shall only be reimbursed if it was not documented in the claimant's plan developed pursuant to the 1971 Housing Element Guidelines;
- B. collection and tabulation of employment data, and the analysis and documentation of employment trend including its consideration in the housing need projections - Section 65583(a)(1);
- C. review of the allocation data provided by the Council of Governments or the Department of Housing and Community Development regarding the locality's share of regional housing need and, if necessary, revision to the claimant's housing elements as a result of the allocation data.
- D. collection and tabulation of data regarding the handicapped and farmworkers, and the analysis and documentation of their housing needs - Section 65583(a)(6);

- E. collection and tabulation of data regarding energy conservation and the analysis and documentation of opportunities for energy conservation with respect to residential development - Section 65583(a)(7); and,
- F. one-time costs for the documentation of the public participation process - Section 65583(b)(5).

Limitation: Reimbursable costs for the above activities will be limited (1) to the conformance requirement pursuant to Section 65587 and (2) as a result of an evaluation pursuant to Section 65588.

Guidelines for Claim Preparation

This procedure **will** help local government to organize the **data** presentation for the various categories of allowable **costs** that **may** be claimed. Adherence to this procedure will facilitate the reimbursement **process**. It will **also** ensure consistency in the review of the claim and lessen **the** need by the Controller's Office to contact the claimant for additional information.

1. DESCRIPTION OF ACTIVITY

Workload data as **well** as invoices and other verifications for supplies, equipment and services **etc.** related to the preparation of **the** fair share regional housing **need** component are requested to **support** the level of costs claimed. If costs cannot **be** supported, the **costs** reported will **be** disallowed by the Controller. The selection of appropriate **data** **is** the responsibility of the claimant.

2. SALARY AND EMPLOYEE'S BENEFITS

Show the classification of the employees involved, mandated function performed, number of **hours** devoted to **the** function, hourly rate and fringe **benefits**.

3. PROFESSIONAL AND CONSULTANT SERVICES

List name of contractor, services **performed**, date of service, and cost. **Also, attach invoices for such services.**

4. SERVICES AND SUPPLIES

Only expenditures which can be identified **as** a direct cost **as** a result **of** the mandate can **be** claimed. List costs of material acquired which have been consumed or expended specifically **for** the purposes of this mandate.

5. ALLOWABLE OVERHEAD COST

Indirect costs may only be claimed through an indirect cost rate proposal prepared in accordance with the provision of Federal Regulation CASC-10 (**use** in conjunction with **FMC-74-4**).

6. REQUIRED CERTIFICATION

The following Certification must accompany the claim:

I DO HEREBY CERTIFY:

THAT sections 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with; and

THAT I am the person authorized by the local agency to file claims with the State of California.

Signature of Authorized Representative

Date

Title

Telephone No.

1/20/82
Exhibit "K"
Staff: Ray Banion and Don Provost

Proposed Parameters and Guidelines
Regional Housing Needs: Locality's Fair Share
(Chapter 1143, Statutes of 1980)
(AB 2853)

(On January 4, 1982, the Board received a letter from Olena Berg, Deputy Director of Housing and Community Development, requesting a continuation of this matter - see Attachment "D").

Background:

On August 19, 1981, the Board of Control determined that a reimbursable mandate exists in Chapter 1143, Statutes of 1980, which increases the level of services required of cities and counties in the preparation of housing elements. Member Pelkofer moved and Member Yaroslavsky seconded the motion to find this mandate. The motion carried unanimously (Member Cook, Member Pelkofer, Member Yaroslavsky, and Chairperson Kirkham voting).

After several extensive meetings and telephonic conversations with the Department of Housing and Community Development (HCD), the Department of Finance (DOF), the Governor's Office of Planning and Research (OPR), and the claimants, staff presented proposed parameters and guidelines at the December 16, 1981 hearing of the Board. (See Attachment "A"). Both the claimants and HCD indicated opposition to the proposed parameters and guidelines; they also expressed concern that all of their submissions to Board staff had not been presented to the Board. In response to these concerns, Member Pelkofer moved and Member Beach seconded the motion to continue consideration of the matter until the January 20, 1982 hearing. In addition, the motion directed staff to present the entire administrative record to members of the Board. The administrative record was sent to Board members, HCD, and other parties requesting it on January 11, 1982.

On January 11, 1982, staff made one further attempt to identify any remaining resolvable differences between the claimants and HCD. This attempt was unsuccessful. Therefore, staff is presenting to the Board, in addition to the administrative record, the parameters and guidelines presented by HCD (see Attachment "B") and those presented by William Ross, representing the City of El Monte (representatives of the City and County of San Francisco and the County of Los Angeles have voiced support for Ross's proposal (see Attachment "C")). It should be noted that no written or verbal recommendations have been made by DOF or OPR.

As a guide for the Board in considering the areas of controversy, staff has prepared the following analysis of the issues. Due to the nature of the differences, the issues have been presented in the order of Reimbursable Costs, Eligibility, and Period of Claim.

Staff Analysis

I. Reimbursable Costs

- A. Claimant's Position: In essence, the claimants seek reimbursement for all costs related to revision of housing elements in response to the mandates of AB 2853. While acknowledging that the preparation of housing elements is not a reimbursable mandate because this requirement preceded SB 90 law, the claimants still maintain that an "increased level of service" was required under AB 2853 and the increase can be measured by accounting for costs associated with the greater specificity and detail contained in AB 2853. The specific reimbursable costs are listed on pp. 2-3 of Attachment "C".
- B. HCD's Position: HCD maintains that, when AB 2853 and prior law are compared, there are virtually no new requirements that would result in an increased level of service. Citing Government Code (G.C.) Section 65302 (as enacted by AB 1301 of 1971 - see Administrative Record), HCD maintains that:

"The Board directed staff to treat the Housing Element Guidelines as advisory. As such, the Guidelines give substance to the brief statutory language of G.C.65302(c) and provide criteria for what should be contained in the Housing Element."

Consequently, HCD proposes that each locality compare the activities performed under AB 2853 against the activities performed under G.C. 65302 (c), as interpreted by the Housing Element Guidelines. Following this comparison of requirements, HCD further proposes that offsetting savings resulting from the removal of certain requirements be computed and subtracted from the reimbursable costs. (See Attachment "B", pp. 8-14)

- C. Staff Comment: In determining a mandate in AB 2853, the Board directed staff to treat the Housing Guidelines adopted by HCD as advisory. Staff understands such direction to mean that provisions of the Housing Guidelines are not to be applied in determining whether a particular activity was mandated prior to January 1, 1973. Rather, staff concluded from this direction that only the provisions of pre-1973 legislation effecting the housing element requirements should be considered. (See statute and code provisions included in Section V-C2 of the Administrative Record).

Should the Board agree with HCD, then staff requests direction to prepare parameters and guidelines implementing HCD's analysis on pp. 8-14 of Attachment "B".

The claimants agree with staff's interpretation of the Board's action. However, they disagree with Board staff's conclusions regarding the specific differences in service levels between AB 2853 and prior law. Should the Board agree with the claimants' and staff's positions on the applicability of the Housing Guidelines, then an analysis of the differences between the claimant's and staff's positions on specific items is necessary. HCD's position would be inapplicable in light of the policy determination that the Housing Guidelines do not interpret the mandate of pre-1973 law.

The claimant and staff positions on specific reimbursable activities are as follows:

1. Locality's Fair Share Determination: The claimants and Board staff agree that activities related to the incorporation of the localities fair share of the regional housing demand into the housing element is a reimbursable activity. The claimants list reimbursable tasks related to this activity as Items #7 and #8 **of** their proposed parameters and guidelines. (See Attachment "C"). Board staff has expanded upon the claimant's list of tasks in Items #1 - #5 on pp. 2-3 of its proposal.
2. Revision of the Housing Element: The claimants view the Locality's Fair Share Determination as one part of a larger Housing Element Revision scheme. Board staff has earlier maintained that, because of pre-1973 housing law, any activities not related to the Locality's Fair Share Determination are not reimbursable. Upon further examination, staff now supports the claimant's assertion that costs associated with the revision of the Housing Element can be used as a measure of the "increased level of service". However, staff believes that some limitations upon the claimant's definition of revision tasks (listed as Items 1-6 and 9-11 in Attachment "C") is necessary. The Board may wish to consider imposing limits in the following areas:
 - a. Claimant's Item 1.a. (Revision Performed by Contractor). Staff supports reimbursement for consultant and professional services; however, staff believes that a copy of any contracts for such services should be submitted with claims. Such contracts should be subject to audit for verification of costs claimed.
 - b. Claimant's Items 1.b. (1-5 and 10-11). Reimbursement for these items should be limited to costs directly resulting from the procedural and substantive requirements of AB2853.
 - c. Claimant's Item 1.b.6 (Internal Consistency). The requirement that housing elements be internally consistent with the other elements of the general plan has existed in statute since 1971. Therefore, staff believes

reimbursement for costs in this area should be limited to activities associated with new components of the general plan; namely, the Locality's Fair Share Determination. Reimbursement for adjustments made in response to other AB2853 revisions of the housing element would be difficult, if not impossible, to separate from non-AB2853 revisions. For example, the statement of goals and objectives required under AB2853 might incorporate directions and choices resulting solely from changes in the conditions of a particular community.

d. Claimant's Item I.E.1.(b)(3) (CEQA requirements). Staff believes that the environment review requirements result from the Public Resources Code, not AB2853. Therefore, it would be necessary for the claimant to file a test claim under the statutes enacting the California Environmental Quality Act in order to obtain reimbursement for such costs.

II. Eligibility

- A. Claimant's Position: Based upon the claimant's assertions regarding reimbursable costs, the claimant seeks eligibility for all localities that adopted a general plan prior to January 1, 1981 (the effective date of AB2853).
- B. HCD's Position: HCD maintains that the claimants that meet the mandates of AB2853 should be eligible for reimbursement. Because HCD views those mandates as extremely limited, this proposal limits eligibility. HCD further recommends that: "the Board, in determining whether a jurisdiction has complied with the mandate...likewise consider the department's (HCD's) findings as advisory. In effect, only those jurisdictions that the department has determined have adopted Housing Elements in compliance with housing element law shall be considered eligible for reimbursement." (p. 3, Attachment "B")
- C. Staff Comment: Staff supports the claimant's position. Regarding HCD's recommendation, staff is concerned that the Board is being asked to: 1) Make a determination as to the compliance of a locality with state housing law prior to approving reimbursement; and 2) rely upon HCD's recommendation in making that determination.

AB2853 contains numerous provisions for the review of housing elements, including the provision for judicial review of compliance under the provisions of Section 1085 of the Code of Civil Procedure (Section 65587(b)). No provision is made for review of compliance by the Board of Control. Further, the findings of HCD regarding compliance are limited to being "advisory in nature" (Section 65585(d)). That being the case, it seems that the Board is being asked to assume authority in an area where it does not have statutory jurisdiction. In the past, the Board has determined that it is not an enforcement agency. When adopting parameters and guidelines for Solid Waste Management, the Board was asked by the Solid Waste Management Board (SWMB) to withhold payment to any county whose plan was deemed

to be inadequate. SWMB's recommendation was rejected.

III. Period of Claim

- A. Claimant's Position: The claimants seek reimbursement for all costs incurred after the filing date of the mandate which was September 26, 1980.
- B. HCD's Position: HCD maintains that Revenue and Taxation Code Section 2235 prevents the Board from reimbursing any costs incurred prior to the effective date of a mandate, which was January 1, 1981 for AB2853.
- C. Staff Comment: Staff agrees with HCD that RTC 2235 limits reimbursement for costs incurred prior to the effective date of a mandate. However, staff has concluded that HCD has overstated the limitation, which applies only to local agencies which had already been incurring the mandated costs at their option. Staff supports the inclusion of this limitation in the parameters and guidelines.

State Board of Control
March 25, 1982
Sacramento, California

The State Board of Control met in regular session in Room 437, State Capitol building, Sacramento, California, on March 25, 1982.

Present were Chairperson David E. Janssen, Director of General Services; Edwin Beach, Member; Theresa Cook, Member; Peter Pelkofer, Deputy State Controller, who acts for and in the absence of Kenneth Cory, State Controller; and present at 10:43 a.m., Zev Yaroslavsky, Member.

There being a quorum present, the Chairperson called the meeting to order at 9:30 a.m.

Chairperson Janssen noted that a claim of first impression, Item 24 filed by the City of Alamitos, SB 90-3951 - (California State Land Commission, Retrocession of Federal Lands) Calendar Item 32 (1-29-79, 1979-80 FY), had been continued at the claimant's request.

Steve Muraki informed the Board that Item 13, filed by Riverside County, SB 90-3986 (10% CAP on Special Education Services) Chapter 797, Statutes of 1980 (1980-81 FY) had been withdrawn at the claimant's request.

The Board next heard Item 36.1, proposed parameters and guidelines for Title 14, CAC, Chapter 2, Article 7 (Solid Waste Management Plans).

The State Department of Solid Waste Management advised the Board that it had not been notified of the proposed parameters and guidelines on this claim in a timely manner, and requested a continuance on the claim. The request was denied.

After discussion of parameters and guidelines issues, Member Pelkofer made a motion to continue the hearing on the claim, No second was made on the motion.

Chairperson Janssen instructed Board staff, the claimant's representative, and representatives from the State Solid Waste Management Board, and State Department of Health Services to discuss the proposed parameters and guidelines in a meeting outside the Board room, Chairperson Janssen reset the hearing on this matter for 2:30 p.m.

Next, the Board granted the claimant's request to continue the hearing on Item 14, County of Los Angeles, SB 90-3990 (Heritable Disease) Chapter 1037, Statutes of 1977 (1980-81 FY).

Member Cook requested an executive session of the Board sometime during the day.

Member Cook additionally requested that Board staff be instructed to provide the Board with a list of which claims will be included in the local government claims bill and the jurisdictions that will be affected on a ongoing basis. Ray Banion, Board staff, informed Member Cook that the information is currently available.

The Board next considered Exhibit "A", the minutes of the January 20, 1982 hearing. A correction was made in the minutes. Line 5, paragraph 3, page 3, was missing a line. The Board requested that a line be added to indicate that the Board motion on Chapter 996, Statutes of 1980 was to not find a mandate. Member Beach moved and Member Pelkofer seconded the motion to approve the minutes of the January 20, 1982 hearing with the noted correction. Motion carried by unanimous vote.

The Board next considered Items 1, 2, 3, 5, and 6, which were claims for reimbursement of costs mandated under Chapter 1071, Statutes of 1976 (Juvenile Justice).

Member Cook moved and Member Pelkofer seconded the motion to approve the State Controller's recommendations. Without objection, Items 1, 2, 3, 5, and 6 were approved.

<u>Item</u>	<u>Claimant</u>	<u>Amount Approved</u>
1	County of Del Norte (1976-77 & 1977-78 FYs) # SB 90-321-A & B	\$ 16,013.74
2	County of Kings (1976-77 & 1977-78 FYs) # SB 90-1469-A	32,358.00
3	County of Napa (1976-77 & 1977-78 FYs) # SB 90 1482-A	73,399.00
5	County of San Mateo (1976-77 & 1977-78 FYs) # SB 90-643-B	612,563.00
6	County of Santa Cruz (1976-77 & 1977-78 FYs) # SB 90-570-B	30,659.00

Next, the Board discussed Item 4, a claim for reimbursement of costs mandated under Chapter 1071, Statutes of 1976 (Juvenile Justice). The Sacramento County Controller's Office disagreed with the amount of reimbursement recommended by the State Controller's Office. Sacramento County asserted that reimbursable costs were denied because it filed its claim under Revenue and Taxation Code Section 2231 and thus was not allowed additional reimbursement of costs which the claimant alleged Revenue and Taxation Code Section 2234 would have provided.

The State Controller's Office stated that the county was unable to provide sufficient documentation that it incurred costs of a state-mandated new diversion program.

Member Pelkofer moved and Member Beach seconded the motion to approve the State Controller's recommendation, provided that the State Controller reimburse the county if additional documentation is provided within 90 days. Motion carried by unanimous vote. The question of the base year's cost was kept open.

Additional discussion followed regarding the State's disallowance of auditor-controller costs. The State Controller's Office asserted that the costs for preparing claims are not reimbursable under the parameters and guidelines. In order to continue to apply consistently, the applications of indirect versus direct costs, Member Beach moved and Member Pelkofer seconded the motion to approve the State Controller's recommendation to reduce, by \$4,697, reimbursement for direct costs incurred by the county auditor. Motion carried by unanimous vote.

<u>Item</u>	<u>Claimant</u>	<u>Amount Approved</u>
4	County of Sacramento (1976-77 & 1977-78 FYs) # SB 90-321-A & B	\$ 513,831.00

The Board next considered Item 7, a request to modify the Controller's instructions, filed by the County of San Bernardino, SB 90-3988 (Conservatorship/Guardianship) Chapter 1357, Statutes of 1976.

San Bernardino County requested that the Board modify the Controller's claiming instructions to include all Public Guardian and County Counsel costs incurred as a result of Chapter 1357, Statutes of 1976.

The State Controller's Office explained that reimbursement for these claimed positions, although allowed for reimbursement previously, were found later to be covered in other codes and thus were no longer reimbursable under the Controller's claiming instructions.

Member Yaroslavsky arrived at the hearing at 10:43 a.m.

Member Beach moved and Member Cook seconded the motion to reiterate the Board's policy of November 1980--to pay for such costs when adequately documented--and approved the request to modify the Controller's claiming instructions. Votes on the motion were: Member Beach, aye; Member Cook, aye; Member Pelkofer, no; Member Yaroslavsky, aye; and Chairperson Janssen, aye. Motion carried.

The Board instructed the Controller, in setting up the reimbursement guidelines, to use the statement that the Board had used for the November 1980 policy.

The Board's preceding motion did not cover Items 8, 9, and 10, incorrect reduction claims filed by the counties of San Bernardino and Santa Clara under Chapter 1357, Statutes of 1976 (Conservatorship/Guardianship). Discussion on Items 8, 9, and 10 was continued so the Board could review the appropriateness of costs claimed under the Controller's new instructions resulting from the Board's action on Item 7.

<u>Item</u>	<u>Claimant</u>	<u>Amount Approved</u>
8	County of Santa Clara (1977-78 FY) # SB 90-3007	\$ 14,795.00
9	County of Santa Clara (1978-79 FY) # SB 90-3007	54,500.00
10	County of San Bernardino (1979-80 FY) # SB 90-3987	3,590 .00

The Board next considered an incorrect reduction claim, Item 11, filed by the County of Orange, SB 90-3984 (Purging Voter Files) Chapter 936, Statutes of 1980 (1980-81 FY).

It was noted that the Secretary of State set the reimbursement rate for purging voter files and the State Controller's Office issued payment. Thus, the Controller simply followed what the law provided for. Member Beach moved and Member Yaroslavsky seconded the motion to find that the Board does not have jurisdiction over Item 11. The motion carried by unanimous vote.

The Board next considered Item 33, proposed parameters and guidelines for Chapter 1143, Statutes of 1980 (Regional Housing: Locality's Fair Share).

William Ross, attorney for the City of El Monte, testified that the proposed parameters and guidelines do not reflect the intent of the Legislature in enacting Chapter 1143, Statutes of 1980. Mr. Ross questioned the legalities of the use of the word "should" in the proposed parameters and guidelines and questioned the vagueness of the guidelines.

Member Pelkofer moved and Member Yaroslavsky seconded the motion to adopt the proposed parameters and guidelines and, if necessary, later amend the parameters and guidelines. Votes on the motion were: Member Beach, aye; Member Cook, no; Member Pelkofer, aye; Member Yaroslavsky, no; Chairperson Janssen, aye. Motion carried.

The Board adjourned to meet in executive session on the question of personnel. An additional executive session occurred prior to reconvening the Board hearing. The subject of this session was on pending litigation.

The Board reconvened and considered proposed estimates of statewide costs, Item 39.

Hazardous Atmosphere Firefighting
Title 8, CAC, Section 5144(g)

Proposed Estimates

1978-79 FY	Finance:	\$ 321,000.00
	Arcade:	321,000.00
1979-80 FY	Finance:	110,540,000.00
	Arcade:	28,000,000.00
1980-81 FY	Finance:	121,630,000.00
	Arcade:	30,000,000.00
1981-82 FY	Finance:	131,703,000.00
	Arcade:	44,000,000.00
1982-83 FY	Finance:	142,897,755.00
	Arcade:	--

(The Board's mandate decision is being appealed by Cal-OSHA and will be considered by Sacramento Superior Court on April 16, 1982.)

Member Yaroslavsky moved and Member Cook seconded the motion to not take a position on the matter at this time. Motion carried unanimously.

The Board next considered an incorrect reduction claim, Item 12, filed by the County of Merced, SB 90-4005, (Unemployment Insurance), Chapter 1053, Statutes of 1979, 1980-81 FY.

Alameda County spokesperson, Ken Bartell (Chairperson of the Unemployment Insurance Subcommittee for the County Personnel Administrators Association), suggested that the Board also consider Items 15, 16 and 17, because these items fall under the same "category."

Unemployment Insurance

(Chapter 1053, Statutes of 1979, 1980-81 FY)

City of Dixon
SB 90-4002

County of Kern
SB 90-3998

Sonora Union Unified School District
SB 90-4004

Reimbursement for 1980-81 FY, Chapter 1053, Statutes of 1979 claims (City of Dixon, Sonora Union Unified School District, and the County of Merced) was included in the Board's recent claims bill. Kern County's 1981-82 FY claim for reimbursement was not included in the Board's claims bill.

Chairperson Janssen concurred with Board staff that the Revenue and Taxation Code does not appear to authorize the Board to consider claims filed under legislation which provides for payment of mandates. Member Pelkofer pointed out that reimbursement procedures set in statute have already been followed by the Controller (Revenue and Taxation Code Section 2236).

Member Cook inquired whether an equity issue was involved. Mr. Miller, representing Sonoma Union Unified School District, testified that all entities are to be treated equally.

Member Beach moved and Member Pelkofer seconded the motion that Items 12, 15, 16 and 17 were improperly filed before the Board. Motion carried by unanimous vote. (Member Yaroslavsky was absent.)

The Board next considered Item 18, a claim of first impression filed by the City and County of San Francisco, SB 90-3996, (Municipal Court Judges), Chapter 1231, Statutes of 1980 (1981-82 FY).

The claimant's counsel argued that it is not a local option to increase the number of municipal court judges for the City and County of San Francisco; and instead it is a duty of the Legislature, which can not be delegated as spelled out in the Constitution, to determine the number of municipal court judges.

Member Pelkofer inquired whether the City and County of San Francisco had adopted a resolution stating that it has sufficient funds to pay for an additional municipal court judge. The claimant responded by quoting a portion of the resolution which stated that a twentieth municipal court judgeship was approved. The judgeship position had not been filled at the time of the March 25, 1982 hearing, according to the claimant.

Member Pelkofer moved and Member Beach seconded the motion that no mandate exists at the time of the hearing. Votes on the motion were: Member Beach, aye; Member Cook, no; Member Pelkofer, aye; Chairperson Janssen, aye.

The Board next considered Item 20, a test claim filed by Tahoe-Truckee Unified School District, SB 90-3997 (School Lunches), Chapter 1277, Statutes of 1975; and Chapter 1010, Statutes of 1976 (1980-81 FY).

The issue at hand was summarized by the claimant's representative, Norman Miller of School Services of California, Inc. He asserted that the basic issue concerned decreasing funding and increasing costs.

Member Beach moved and Chairperson Janssen seconded the motion that the claim be denied because it is an underfunded claim which is funded by the state and federal government, and that the sufficiency of the funds is not within the jurisdiction of

the Board. Votes on the motion were: Member Beach, aye; Member Cook, no; Member Pelkofer, aye; Chairperson Janssen, aye. Motion carried.

The Board next continued its consideration of Item 36.1, Proposed Parameters and Guidelines for Title 14, CAC, Chapter 2, Article 7 (Solid Waste Management Plans).

Bob Olsen with the County of Stanislaus voiced concern that a member of the Board was absent. He requested that the Board discussion of Item 36.1 be continued. (Member Pelkofer was absent during a portion of the Board's discussion of this claim). It was noted that the only issue now up for discussion was a question by the Department of Health Services concerning hazardous waste. Stanislaus County withdrew its request for a continuance.

Member Pelkofer moved and Member Cook seconded the motion to adopt the proposed parameters and guidelines with amending language which reimburses counties for the hazardous waste portion of the plan. Member Beach made a statement that if the cost of the plan was taken out of the hazardous waste Board's budget, he would then support the motion; Member Pelkofer agreed to this amendment. Votes on the motion were: Member Cook, aye; Member Pelkofer, aye; Chairperson Janssen, aye; Member Beach abstained.

The Board next considered Item 21, a claim of first impression filed by the County of Alameda, SB 90-3758 (Mattress Standards for Youths) Title 15, CAC, Section 4323(c), (1979-80 FY).

Chairperson Janssen noted that the claim had been before the Board at its December 16, 1981 hearing.

Member Beach suggested that the claim may more properly be filed as an equity claim before the three-member Board of Control.

Member Beach moved that the Board not find a mandate. The motion was not seconded.

Discussion at the hearing uncovered the fact that the standard size bed is 76" long and that most California county correction facilities have the 76" long beds. It was established that the issue at hand was an Alameda County issue.

Member Pelkofer moved and Member Cook seconded the motion that the Board find a mandate to the extent of the cost of replacing the beds based on the regulation. (Motion applied only to Alameda County's claim). Votes on the motion were: Member Beach, no; Member Cook, aye; Member Pelkofer, aye; Chairperson Janssen, aye. Motion carried.

The Board further discussed Item 21. Allan Burdick, representing the County Supervisors Association of California, asked the Board to clarify how counties should be advised on filing for reimbursement under Title 15, CAC, Section 4323(c).

Chairperson Janssen suggested that the parameters and guidelines be written to state in simple terms that Alameda County receive \$8,700. Member Pelkofer suggested that since the Board did find a mandate existed, that all other counties seeking reimbursement file a claim (not a test claim),

The Board next discussed Item 22, a claim of first impression filed by the County of Orange, SB 90-4001 (Transportation Fund Audit), Title 21, CAC, Section 6661 (1980-81 FY), (Member Pelkofer left the meeting room prior to the discussion of Item 22.)

The claimant asserted that an increased level of service resulted from auditing requirements which exceeded the government code. The Board questioned the county's prior auditing procedures of the County Local Transportation Fund. The claimant's representative testified that the reason that the department felt it was necessary to adopt Title 21, CAC, Section 6661, was due to irregularities which the state needed to address,

Member Beach moved that the Board find no mandate based on California Government Code Section 25250 (which says the county shall audit). The motion was not seconded.

Member Beach moved and Member Cook seconded that the Board find a mandate. Votes on the motion were: Member Beach, aye; Member Cook, aye; Chairperson Janssen, no. Motion failed. Board Legal Counsel, Emil Relat, clarified, at the request of Member Cook, that the claimant has the right to resubmit the claim. Relat stated, "A claim which fails to obtain approval of the majority of the Board members, but is not rejected by the majority of the Board members, may be resubmitted at a later date."

The Board next considered Item 23, a test claim filed by the County of Sacramento, SB 90-3999 (Cost of Forms) All County Letter No. 81-64, (1981.-82 FY). The Board agreed that "all county letters" fall under the Board's jurisdiction because through the all county letter, the state can issue directives to counties, and it is thus an executive order.

The Board next considered testimony which addressed whether All County Letter No. 81-64 directed counties to take any new action. The Board determined that the state's requirement that counties use specific welfare forms was a new requirement.

Member Beach moved and Member Pelkofer seconded the motion to, deny the claim because neither a new program nor increased level of service was indicated. Votes on the motion were: Member Beach, aye; Member Cook, no; Member Pelkofer, aye; Chairperson Janssen, aye. Motion carried.

The Board next considered Item 25, a claim of first impression, filed by the City and County of San Francisco, SB 90-3983 (Form Pauperis) California Rules of the Court, Rule 985, (1980-81 FY).

The claimant alleged that because of Rule 985, it has suffered a non-recovery of its expense in processing increased forma pauperis filings. The adequacy of the filing forms and the issue of a judge's authority to accept or deny a forma pauperis filing was discussed.

Member Pelkofer moved and Member Beach seconded the motion to deny the claim because of the lack of demonstrable evidence that Rule 985 caused an increase in forma pauperis filings. Votes on the motion were: Member Beach, aye; Member Cook, no; Member Pelkofer, aye; Chairperson Janssen, aye. Motioned carried.

The Board next considered Item 26, brief written statement on Chapter 913, Statutes of 1979; and Chapter 11.58, Statutes of 1980 (Domestic Violence Diversion). The County of Orange and City and County of San Francisco requested that the Board reconsider their test claims, which the Board rejected at its January 20, 1982 hearing.

Member Pelkofer moved and Member Beach seconded the motion to not support the requests to reconsider the test claims. Votes on the motion were: Member Cook, no; Member Pelkofer, aye; Chairperson Janssen, aye; Member Beach, aye. Motioned carried.

Member Cook requested that she be provided with a transcript or tape of the Board's January 20, 1982 discussion of the preceding claims filed under Chapter 913, Statutes of 1979; and Chapter 1158, Statutes of 1980. Chairperson Janssen instructed Board staff to furnish Member Cook with the requested tape.

Member Beach requested that the brief written statement include mention of the Board's finding that it found no new program in Chapter 913, Statutes of 1979; and Chapter 1158, Statutes of 1980. Member Pelkofer noted that the Board made no reference to increased level of service in its mandate determination. Thus, all such references were stricken from the brief written statement.

Member Pelkofer moved and Chairperson Janssen seconded the motion to adopt the brief written statement as corrected. The vote was unanimous. (Member Yaroslavsky absent).

The Board next considered Item 27, brief written statement on Chapter 996, Statutes of 1980 (Enforcement of Gasoline Prices).

Member Beach moved and Member Pelkofer seconded the motion to adopt the brief written statement as presented. Votes on the motion were: Member Cook, no; Member Pelkofer, aye; Chairperson Janssen, aye; Member Beach, aye. Motion carried.

The Board next considered Item 28, brief written statement on Chapter 1333, Statutes of 1980 (Proficiency Testing in Adult Schools).

Member Pelkofer moved, and Member Beach seconded the motion to adopt the brief written statement as presented. Motion carried by unanimous vote. (Member Yaroslavsky absent).

The Board next considered Item 29, brief written statement on Chapter 1247, Statutes of 1980 (Worker's Compensation Transportation).

Member Pelkofer moved and Member Beach seconded the motion to adopt the brief written statement as presented. Votes on the motion were: Member Cook, no; Member Pelkofer, aye; Chairperson Janssen, aye; Member Beach, aye. Motion carried.

The Board next considered Item 30, brief written statement on Title 3, CAC, Section 2450(n) (Permits for Use of Restricted Materials).

Member Beach moved and Member Pelkofer seconded the motion to adopt the brief written statement as presented. Votes on the motion were: Member Cook, no; Member Pelkofer, aye; Chairperson Janssen, aye; Member Beach, aye. Motion carried.

The Board next considered Item 31, brief written statement on Title 3, CAC, Section 3412 (Woolly Whitefly).

Member Beach moved and Member Pelkofer seconded the motion to adopt the brief written statement as presented. Votes on the motion were: Member Cook, no; Member Pelkofer aye; Chairperson Janssen, aye; Member Beach, aye. Motion carried.

The Board next considered Item 32, proposed parameters and guidelines for Chapter 845, Statutes of 1978 (Filipino Employee Survey).

Chairperson Janssen inquired as to whether the proposed parameters and guidelines were properly noticed, since the parameters and guidelines were not submitted at least seven (7) days prior to the Board's March 25, 1982 meeting. Member Beach requested that Item 32 be continued for Board consideration because the Board had not been provided the parameters and guidelines until the day of its March 25, 1982 meeting, and thus had not had sufficient time for review. Chairperson Janssen approved the request.

The Board next considered Item 34, proposed parameters and guidelines for Title 8, CAC, Section 3410 (Wildland Firefighters Protective Clothing and Equipment).

Hearing no objections, Member Pelkofer moved and Member Beach seconded the motion to adopt the proposed parameters and guidelines as presented. Motion carried by unanimous vote. (Member Yaroslavsky absent).

Emil Relat, Board legal counsel, clarified an earlier Board inquiry regarding time requirements of making available for review, proposed parameters and guidelines. Mr. Relat stated that writings which are public record, that are to be distributed at a public meeting, are to be made available for public inspection prior to the commencement of hearing and discussion (public meeting law).

The Board next considered Item 35, proposed parameters and guidelines for Title 15, CAC, Section 4500-49 (Standards for Detention of Minors).

The Board refused to make a determination on the claimant's requested amendments until it is clarified whether the claimant's eligibility for reimbursement is "ongoing" or "one time." Also, increased costs resulting from standards requiring showering and personal visits for detained minors were discussed.

Chairperson Janssen continued Board consideration of Item 35 until the preceding, and additional issues, are clarified.

The Board next considered Item 36, proposed parameters and guidelines for Title 22, CAC, Section 64437(a), (Water Quality Monitoring Plans).

There being no objections to the proposed parameters and guidelines, Member Pelkofer moved and Member Beach seconded the motion to adopt the proposed parameters and guidelines as presented. Motion carried by unanimous vote. (Member Yaroslavsky absent).

The Board next considered Item 36.2, proposed parameters and guidelines for Chapters 282, 1035, and 1039, Statutes of 1979 (Adult School Crossing Guard Program).

The claimant requested that certain administrative costs be reimbursed. The Board denied the request.

Member Beach moved and Member Cook seconded the motion to adopt the proposed parameters and guidelines as presented. Motion carried by unanimous vote. (Member Yaroslavsky absent).

The Board next considered Item 37, proposed estimates of statewide costs resulting from Chapter 876, Statutes of 1976 (Sentencing Transcripts).

Member Pelkofer asked **why** Board staff **was** recommending a cost of living increase. Ray Banion, Board staff, stated that the increase resulted from an increased service level, and cost of providing that service has increased over time.

Member Beach moved and Member Cook seconded the motion to accept the Department of Finance's recommended amount of reimbursement. Motion carried by unanimous vote.

Recommended Amount

1978-79 F.Y.
Finance/\$67,492.19

1979-80 F.Y.
Finance/\$74,080.52

1980-81 F.Y.
Finance/\$153,186.70

The Board next considered Item 38, proposed estimates of statewide costs resulting from Chapter 1177, Statutes of 1973 (Ballot Pamphlet Size) .

There being no questions, Member Beach moved and Member Cook seconded the motion to accept Finance's recommended amount of reimbursement. Motion carried by unanimous vote.

Recommended Amount

1978-79 F.Y.
Finance/\$2,443.00

1979-80 F.Y.
Finance/\$6,798.00

The Board next considered Item 40, proposed estimates of statewide costs resulting from PUC Decision No. 91846 (Monitoring Systems for SORS) .

The Board discussed the question of what to do with money received from the auction of tangible items such as equipment, devices, tools, etc. Member Pelkofer made the motion to adopt the Department of Finance's recommended amount of reimbursement, with the amendment that language be included in the claims bill that authorizes the Controller to reduce state funding which BART may claim so that the State may recover or offset proceeds from the auction. Member Cook seconded the motion, Motion carried by unanimous vote. (Member Yaroslavsky absent.)

Recommended Amount

1979-80 F.Y.
Finance/\$52,038.00

1980-81 F.Y.
Finance/\$161,665.00

1981-82 F.Y.
Finance /\$7,700.00

The Board next considered Exhibit "B", claims filed pursuant to Chapter 510, Statutes of 1980, Item 352 (Request for Deficiency Appropriation) pursuant to Education Code Section 42243.6.

Member Beach moved and Member Cook seconded the motion that staff be instructed to include the \$11,727,568 recommended by the Controller in the claims bill. Chairperson Janssen asked that an amendment be added to the motion instructing the State Controller's Office to pass the recommendation through as the Controller's and not the Board's request. Chairperson Janssen also suggested that the Controller defend the recommendation before committee. Emil Relat, Board legal counsel, stated that language contained in statute implies that the Board is responsible for making some judgment on what is going into the claims bill. Member Beach withdrew his motion on the basis of information presented by Mr. Relat.

Member Pelkofer communicated a need to become more familiar with the background of the Controller's audit prior to his approval of the Controller's recommendation.

The Board next considered Exhibit "C", consideration of further action on reimbursement claims filed under Chapter 1146, Statutes of 1978 (Destruction of Animals); Chapter 1275, Statutes of 1975 (Eminent Domain); and Title 8, CAC, Sections 3401-9 (Firefighters Safety Clothing and Equipment).

It was noted that Senator Russel has a bill pending which would allow the Board to accept and submit to the Legislature, claims under all three Exhibit "C" mandates.

Chairperson Janssen asked that the claims be held in case the passage of Senator Russel's bill requires their review.

The Board next considered Exhibit "D", potential reimbursement for alleged capital equipment loss under Chapter 1146, Statutes of 1978 (Destruction of Animals).

The Board took no action on a reimbursement request for capital equipment costs resulting from Chapter 1146/78. The Board did not consider the issues of this claim because in Chapter 1090/81 (SB 1261) the Legislature directed the Board not to approve or submit any claims filed under Chapter 1146/78. AB 171, which was introduced prior to but enacted after SB 1261, supports the legislative direction to delete reimbursement claims filed under Chapter 1146/78.

The Board next considered Exhibit "E", adoption of Board policy on "on call" voting.

Member Pelkofer moved and Member Cook seconded the motion to drop the subject of "on call" voting. Without objection, the motion carried by unanimous vote.

The Board next considered Exhibit "F", discussion of SE 1571 (1982) and SB 1572 (1982) .

Chairman Janssen suggested that the Board support SB 1571.

The Board next considered Exhibit "G", presentation of Report to Legislature pursuant to Revenue and Taxation Code Section 2255.

For the record, Member Beach requested that the report not yet be distributed. Chairperson Janssen consented to the request.

Ray Banion, Board staff, asked if staff could work on the report and get Board input without a formal hearing. Chairperson Janssen approved the request.

The Board next considered various issued under Exhibit "H", status report on pending test claims and parameters and guidelines.

Member Cook inquired about the status of parameters 'and guidelines development for Ch. 1349/80 claims (Reassessment/Transfer of Ownership) and Ch. 1399/79 claims (Custody of Minors). She requested that proposed parameters and' guidelines for Ch. 1349/80; and Ch. 1399/76 claims be presented at the Board's May 1982 hearing.

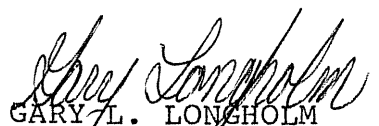
Next, Member Pelkofer and other Board members joined in expressing their concern over the length of time many parameters and guidelines have been in a pending status. Member Pelkofer moved and Member Cook seconded the motion to invite all test claimants and/or their representatives to prepare appropriate parameters and guidelines for those mandates still outstanding. Any proposals received will be presented to the Board at its meeting of May 1982 hearing.

Member Pelkofer also asked that they be submitted to Board staff in enough time for general comment. Member Pelkofer further clarified that his motion did not require Board approval or staff dissemination (except to all concerned agencies) of all parameters and guidelines as submitted by the claimant. Chairperson Janssen additionally clarified that the preparation of proposed parameters and guidelines by claimants is not a Board requirement. In answer to a question posed by Ray Banion, Board staff, Chairperson Janssen instructed Board staff to accept all proposed parameters and guidelines issued by claimants and disregard the "three-week prior to Board hearing" acceptance policy for the May 1982 hearing. (These parameters and guidelines will be accepted for review by the Board up to the day of the May 1982 hearing.) Motion carried by unanimous vote.

The Board next considered a request by Norman Miller of School Services Network. Mr. Miller requested that the Board develop an agenda that would separate cities, counties and school districts. Chairman Janssen approved the request, stating that school districts will be first on the Board's May 1982 agenda.

Meeting adjourned at 6:10 p.m.

Note: The Board did not discuss Item 19, a claim of first impression filed by the County of Los Angeles, SB 90-3990 (Emergency Medical Services Agency) Chapter 1260, Statutes of 1980 (1980-81 F.Y.). Ray Banion, Board staff, notified Chairperson Janssen that the claim was continued.


GARY L. LONGHOLM
Executive Secretary